

Fairfax County Chamber of Commerce Panel:

Federal Acquisition Streamlining Act of 1994

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**The New Way To Do Business With
The Federal Government**

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Federal Acquisition Streamlining Act of 1994

- **Reduces paperwork burden by eliminating redundancy, providing consistency, and facilitating implementation of innovative procedures**
- **Renewed emphasis on Commercial Items**
- **Simplified Acquisition Threshold**
- **Bid Protest procedural changes**
- **Electronic Commerce Procedures (FACNET)**
- **Pilot Programs**
- **Acquisition Management**
- **Proposed regulation shall be issued within 210 days after enactment, final regulations shall be issued not later than 330 days after enactment**

Commercial Items

- **New Title in Chapter 10 to encourage the use of commercial items and non-developmental items (NDIs).**
- **Purchase of commercial and NDI products can eliminate the need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications or expensive product testing.**
- **The definition of commercial items has been expanded to include:**
 - **commercial items not yet available in the commercial marketplace if they evolve out of commercial items**
 - **leased items and intra-company transfers**

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Commercial Items

- **modified commercial items**
- **goods "customarily" used in the private sector**
- **NDIs if the item was developed at private expense and has been sold in substantial quantities on a competitive basis to multiple state and local governments**

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Commercial Items

- Commercial items are exempt from over 30 statutes that are unique to government purchases, and have no counterpart in the commercial sector:
 - procurement Integrity certifications
 - requirement to identify suspended or debarred subcontractors
 - Drug-Free Workplace Act of 1988
 - identification of suppliers and sources
 - inventory accounting requirements

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Commercial Items

Truth in Negotiations Act (TINA)

- **Makes permanent the \$500,000 threshold and creates a new commercial item exception to relieve commercial contractors of the burden of collecting cost or pricing data for the government by:**
 - **requiring agencies to conduct procurements of commercial items on a competitive basis to the maximum extent practicable**
 - **allowing contracting officers to seek pricing information and if adequate to demonstrate price reasonableness the contracting officer must exempt the acquisition from cost and pricing data requirements**

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Commercial Items

- extending the commercial products exemption to cover commercial products that are transferred from one division of a company to another
- requiring the head of the procuring activity to make a written determination that certified cost and pricing information is necessary in below-threshold procurements
- TINA now applies to both DoD and civilian agencies

Simplified Acquisition Threshold

- **Raise the current "small purchase threshold" from \$25,000 to a new "Simplified Acquisition Threshold" of \$100,000**
 - **streamline small purchases, reduce staff time resulting in substantial savings for the government**
- **Purchases below the threshold are exempt from various other requirements which apply to other government procurements**
 - **contract audit requirements**
 - **The Miller Act**
 - **Drug-Free Work Place Act of 1988**
 - **requirement to identify suspended or debarred subcontractors**
 - **identification of suppliers and sources**

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Simplified Acquisition Threshold

- **Contracts above \$2,500 but under the simplified acquisition threshold are reserved for small businesses and specifically authorizes continued set-asides of all contracts under the threshold for minority small businesses**

Competition In Contracting Act

- **New section added to CICA to specifically address task order contracts for advisory and assistance services (e.g., consultants)**
 - **Duration of all task order contracts is limited to 5 years**
 - **If contract exceeds 3 years, and is estimated to be in excess of \$10 million, then under most circumstances the solicitation must provide for multiple awards**
- **New exception is added to allow agencies to retain expert witnesses or services without going through a competitive process (with proper justification and approval prior to making a sole source purchase)**

Bid Protests

- **Notice and Debriefing:**
 - greater detail to be made available with respect to evaluation factors and rankings between the offerors
 - if agency requirements are resolicited within one year, then all offerors shall be provided the same debriefing information
 - new schedule for requesting debriefings and for filing a protest after a debriefing to suspend the contract award

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Bid Protests

- Now all "calendar" days, no more "working" days
125 days versus 90 working days at GAO
 - 35 days versus 25 working days for agency report
- Agencies must notify unsuccessful offerors within three days of contract award
- Requests by offerors for debriefings must be made within three days after notice of the award is received
- Debriefing must take place within five days of receipt of request, to the maximum extent practicable

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Bid Protests

- **Debriefings must contain the basic information about the award decision. In addition, offerors are to receive the overall evaluated cost and technical rating of the awardee, the debriefed offeror, as well as the overall ranking of all offers**
- **Provide for the public disclosure of any settlement agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds**
- **Codifies the GAO's authority to issue administrative protective orders**
- **Caps the recovery of attorneys' fees, except for small businesses, at \$150 per hour except where higher fees can be justified**

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Bid Protests

- With respect to post-award protests, the GSBCA would now parallel the GAO in that agencies are authorized to continue the procurement process up to the point of award of a contract
- Address frivolous or bad faith protests to the GSBCA by authorizing the GSBCA to dismiss a protest that is frivolous, brought in bad faith, or does not state on its face a valid basis for protest. In addition, it authorizes the GSBCA to invoke procedural sanctions where a person brings a frivolous or bad faith protest, or willfully abuses the Board's process
- Amends the Comptroller General's authority to provide that the Comptroller General may recommend the payment of attorneys' fees in bid protest cases, rather than directing the agencies to pay such fees

Federal Acquisition Network (FACNET)

- Government procurements to evolve from a paper-based process to an electronic process
- FACNET general functions must be implemented within five years by all federal agencies
- Until fully implemented, agencies are allowed to use the simplified procedures for all contracts below \$50,000, while maintaining the streamlined CBD notice requirement in § 4202 for contracts above \$25,000.
- Upon full government-wide implementation of electronic commerce (defined as 75% of all government suitable acquisitions between \$25,000 and \$100,000), the CBD notice requirement is waived for all contracts below \$250,000 that are conducted using electronic commerce

Pilot Programs

- **Authorizes the Administrator of the Office of Federal Procurement Policy (OFPP) to conduct six test programs of alternative and innovative procurement procedures**
 - **The test program could include innovative procedures by waiving 15 specified laws concerning matters such as timing and content of notice of contracting opportunities and prescreening of eligible sources**
 - **Participation in the OFPP Test Program could be undertaken by any agency that is capable of using the full FACNET electronic commerce procedures established by the bill**

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Pilot Programs

- **Authorizes DOD to test innovative acquisition procedures under DoD's statutory pilot program authority for five programs**
 - **Fire Support Combined Arms Tactical Trainer (FSCATT)**
 - **Joint Direct Attack Munition (JDAM I)**
 - **Joint Primary Aircraft Training System (JPATS)**
 - **Commercial-Derivative Aircraft (CDA)**
 - **Commercial-Derivative Engine (CDE)**

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Pilot Programs

- **NASA Mid-Range Procurement Test Program**
 - conduct a test of alternative notice and publication requirements
 - acquisitions eligible for the test must be limited to a total annual obligation of \$500,000 or less
- **Authorizes the FAA to test innovative acquisition procedures for one of the modernization programs under the Airway Capital Investment Plan**

Acquisition Management

- **Require the establishment and evaluation of cost and schedule goals for DoD and civilian agencies**
- **Require the identification and review of programs that are not achieving, on average, 90% of cost, performance and schedule goals**
- **Require DoD to define in regulations a simplified acquisition program cycle that is results-oriented**
- **Provide for exceptional performance awards**

Establishing A Uniform Procurement System

- **Amends the procurement laws to promote the uniform treatment of DoD and civilian agency procurements**
 - **Amends the Federal Property Act to establish contract cost principles for civilian agencies. Contract cost principles provide that certain types of costs should not be paid by the taxpayers and are not "allowable" on federal contracts**
 - **Establishes cost certification procedures and penalties identical to those that have long been applicable to DoD procurements**
 - **The Contract Disputes Act of 1978 requirements for certification of claims would remain in effect and the Act will be amended to clarify that such requirements govern all claims, including those at DoD**

Other Changes to Federal Procurements

- **Raise the threshold for application of the contract cost principles to \$500,000**
- **Repealing the requirement for contractor employees to travel at government airfares**
- **Repeal the mandatory use of dual sourcing in major programs**
- **Provide flexibility for agencies in approving the use of non-competitive procedures when there is a valid justification**
- **Provide consolidated audit provisions for both the DoD and civilian agencies**